

EXHIBIT 28

Lockwood, M.D., John M. - 30(b)(6)
Atlanta, GA

April 23, 2009

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL NO. 1456
PRICE LITIGATION) CIVIL ACTION:
THIS DOCUMENT RELATES TO) 01-CV-12257-PBS
U.S. ex rel. Ven-A-Care of) Judge Patti B. Saris
the Florida Keys, Inc. v.)
Abbott Laboratories Inc.,) Chief Magistrate Judge
No. 07-CV-11618-PBS) Marianne B. Bowler

VIDEOTAPED 30(b)(6) DEPOSITION OF

JOHN M. LOCKWOOD, M.D.

Volume I

(Taken by Defendant Abbott Laboratories Inc.)

April 23, 2009

9:27 a.m.

Suite 800

1420 Peachtree Street, N.E.

Atlanta, Georgia

Reported by: F. Renee Finkley, RPR, CRR, CLR,
CCR-B-2289

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<p style="text-align: right;">Page 218</p> <p>1 THE WITNESS: I was mentioning the NDC 2 number of the first listed drug is -- the 3 product code and the package code are 6326-13, 4 and I'm matching that up to my worksheet. And 5 for the purposes of this chart, we did appear to 6 multiply the McKesson cost, times 20 percent, 7 then times 150 percent to arrive at \$13.32 for 8 that column, whereas I haven't -- I'm not 9 rechecking the math, but from my worksheet, if 10 you multiply \$7.40 times 150 percent, that that 11 leads to \$11.10. 12 Q. (By Mr. Berlin) Okay. Well, let me just 13 stick with this fourth column. 14 A. Okay. 15 Q. Really it's almost a mathematical 16 question. What you're doing here is you're taking 17 \$7.40 and you keep saying times 20 percent, but that 18 would lower the number. It's times a hundred -- 19 A. That's correct. You're correct. Yes. 20 Q. Times -- that gave what, just for purposes 21 of this was an -- a recalculation of what the AWP 22 might be?</p>	<p style="text-align: right;">Page 220</p> <p>1 calculation you're doing here, right? 2 A. Let me look for a second. 3 Q. For example, the last two on this -- on 4 the page that you and I are looking at, 80475. 5 A. Yes, whereas they may have actually 6 resulted in a change in the FUL if the -- if the 7 McKesson cost price was used essentially as a WAC 8 reported number, then there would have been changes. 9 So this is an extremely conservative look at this 10 issue. 11 Q. Does Ven-A-Care have any information as to 12 which manufacturer's NDC was used to calculate the 13 FULs that are -- that you were looking at here? 14 A. My understanding is that information is 15 available from HCFA, that they make that available 16 and have over the years made that available. 17 Q. And you're answering whether it's 18 available. My question for you is did you have that 19 information? 20 A. I think we looked at that information 21 online. Whether -- whether I copied that information 22 from them or not and have it in our files, I'm not</p>
<p style="text-align: right;">Page 219</p> <p>1 A. Yes, sir. 2 Q. And then you multiplied it times 150 3 percent to calculate -- that's as if it were the 4 lowest number in the FUL array; and what the FUL does 5 is take the lowest AWP and multiply it by 150 6 percent? 7 MR. BREEN: Objection, form. 8 THE WITNESS: No. The FUL uses the lowest 9 reported price for the calculation, and this 10 particular calculation, we're using the AWP, 11 which is the highest number that could have been 12 used for the FUL for this drug in that 13 circumstance. 14 The normal number used, I think in most 15 circumstances, in fact, most of the ones that 16 I'm aware of, is the WAC represent -- it's the 17 lowest -- my understanding, it's the lowest 18 reported price. But I think we're being even 19 more generous here. 20 Q. (By Mr. Berlin) And in terms -- and in 21 terms of the calculation, there are a few of them 22 which did not result in a lower FUL in terms of the</p>	<p style="text-align: right;">Page 221</p> <p>1 aware that I have it. I might have it, but I'm not 2 aware right now that I have it. 3 Q. And you testified before that you were 4 looking at the Redbook for the FUL, but just to be 5 clear, the Redbook doesn't actually list the FUL, 6 does it? 7 A. Yes, it does. 8 Q. Well, can you turn to page 80481 and show 9 me where the FUL is? 10 A. It's blurred on this, but in the first 11 column, far left, under Erythromycin, that blurred 12 thing right there is HCFA, H-C-F-A, and it's the 13 federal upper limit prices, so that Redbook -- you 14 know, these should be better copies, I guess. 15 But the one above it, actually, I think 16 you might actually be able to read it even a little 17 better there, I think. Well, maybe not. That may 18 not be it, but there is a representation of the FUL 19 for these. 20 Q. So -- I'm sorry, Dr. Lockwood, the actual 21 number appearing under the column of AWP, is that the 22 AWP -- do you understand that to be the AWP for those</p>

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<p style="text-align: right;">Page 222</p> <p>1 Erythromycins or are those the FULs?</p> <p>2 A. I believe these are the FULs. It's listed</p> <p>3 as HCFA. It's the FUL and then the -- the drugs</p> <p>4 listed under it are essentially the manufacturers and</p> <p>5 NDC numbers that are considered in that, or at least</p> <p>6 are listed in Redbook. I really -- I don't know that</p> <p>7 I should say they're considered in that, but they are</p> <p>8 drugs that are listed in Redbook. And my</p> <p>9 understanding is many times HCFA uses the First Data</p> <p>10 Bank information to determine the manufacturer that</p> <p>11 will set the FUL.</p> <p>12 Q. How did Ven-A-Care obtain a copy of</p> <p>13 Econolink?</p> <p>14 A. We made a purchase from McKesson in 2000,</p> <p>15 I think it was in March of 2000. As I recall, we</p> <p>16 called in the order and the person we talked to</p> <p>17 offered the electronic catalog to us, because you</p> <p>18 could place orders electronically instead of having</p> <p>19 to call someone and have them sit and listen to your</p> <p>20 order.</p> <p>21 Q. What was the order that Ven-A-Care placed</p> <p>22 in March of 2000?</p>	<p style="text-align: right;">Page 224</p> <p>1 McKesson and/or others and that we could buy them,</p> <p>2 you know, for the type of prices that were seen on</p> <p>3 the invoices.</p> <p>4 Q. And did you have to do anything in order</p> <p>5 to get the Econolink or --</p> <p>6 A. I -- my recollection was they -- you know,</p> <p>7 it was something they would offer to you. We were</p> <p>8 toying with the idea of getting back more in the</p> <p>9 pharmacy business at that point in time as well. We</p> <p>10 were -- we had just had a settlement in a lawsuit and</p> <p>11 we were considering getting back into and opening a</p> <p>12 store front. And we talked about opening a retail</p> <p>13 pharmacy as well as IV pharmacy and talked in some</p> <p>14 detail about how we would do it, and -- and I don't</p> <p>15 know. We kicked it around for probably almost two</p> <p>16 years.</p> <p>17 Q. And in the end decided not to do that?</p> <p>18 A. Well, I guess that would be the short</p> <p>19 answer, yes. Yes.</p> <p>20 Q. Did you have to sign any agreement with</p> <p>21 McKesson in order to get the Econolink software?</p> <p>22 A. I don't think we -- I don't recall us</p>
<p style="text-align: right;">Page 223</p> <p>1 A. I think it was produced. I'm sure it was</p> <p>2 produced. It was an order for a variety of</p> <p>3 pharmaceuticals.</p> <p>4 Q. And why was Ven-A-Care making that</p> <p>5 purchase at that time?</p> <p>6 A. I think in large part we wanted to prove</p> <p>7 that we could actually buy the drugs that we were</p> <p>8 putting in our initial complaint in Boston, I think</p> <p>9 to prove that we could buy those drugs at the prices</p> <p>10 that were represented at McKesson, as well as, as I</p> <p>11 recall, we also purchased the drugs from a</p> <p>12 distributor A-N-D-A, ANDA, without a contract, and</p> <p>13 that many of the drugs we purchased from McKesson</p> <p>14 were purchased without a contract. They were list</p> <p>15 price purchases.</p> <p>16 And we thought that that was validation of</p> <p>17 our relationship with McKesson which we'd had over</p> <p>18 the years and showed that we were able to buy at the</p> <p>19 prices on those invoices. For instance, I think you</p> <p>20 asked me if we bought the Ery drugs and I'm not --</p> <p>21 and I gave you my answer, but I would say that our</p> <p>22 purchase in 2000 proves that we could buy drugs from</p>	<p style="text-align: right;">Page 225</p> <p>1 signing an agreement. I don't think we had one. We</p> <p>2 had an ongoing relationship with McKesson and I</p> <p>3 think -- I think they saw the software as their</p> <p>4 electronic catalog and they were moving away, as I</p> <p>5 said earlier, from paper catalogs to electronic</p> <p>6 catalogs or price lists, whatever you want to term</p> <p>7 that, perhaps electronic price list would be better.</p> <p>8 So -- and McKesson had, for most of the</p> <p>9 time period we dealt with them, been -- and I</p> <p>10 agonized over this a bit earlier, cause I hate to</p> <p>11 call them our backup wholesaler, but for periods of</p> <p>12 time they were and they weren't. So it was readily</p> <p>13 available.</p> <p>14 My understanding is it was a natural</p> <p>15 progression, and I think I testified earlier that</p> <p>16 they actually quit producing paper catalog I believe</p> <p>17 after the 2003 catalog. So you couldn't buy a paper</p> <p>18 one if you wanted to. If you were going to buy any</p> <p>19 drugs from McKesson, even on a backup basis, it's my</p> <p>20 understanding you had to have the electronic price</p> <p>21 list. And as I said earlier, I think we were a late</p> <p>22 adopter.</p>

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